

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address

☐ Individual appearing without attorney
☒ Attorney for: BENJAMIN SAEEDIAN

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

CHAPTER: 11

EMERGENCY
NOTICE OF MOTION AND MOTION IN
INDIVIDUAL CASE FOR ORDER IMPOSING A
STAY OR CONTINUING THE AUTOMATIC
STAY AS THE COURT DEEMS APPROPRIATE
(with supporting declarations)

DATE: 07/20/2018
TIME: 1:00 pm
COURTROOM: 1545

F 4001-1.IMPOSE.STAY.MOTION

attorney (or upon Movant, if the motion was filed by an unrepresented individual) at the address set forth above no less than 14 days before the above hearing and appear at the hearing of this motion.

- ☒ b. This motion is being heard on SHORTENED NOTICE. If you wish to oppose this motion, you must appear at the hearing. Any written response or evidence must be filed and served: ☒ at the hearing ☐ at least _____ days before the hearing.
- (1) ☒ An Application for Order Setting Hearing on Shortened Notice was not required ~~(according to the calendaring procedures of the assigned judge)~~. The Court granted Debtor's oral motion to schedule the hearing of this Motion on shortened notice during the chapter 11 status conference held on July 17, 2018.
- (2) ☐ An Application for Order Setting Hearing on Shortened Notice was filed per LBR 9075-1(b) and was granted by the court and such motion and order has been or is being served upon appropriate creditor(s) and trustee, if any.
- (3) ☐ An Application for Order Setting Hearing on Shortened Notice has been filed and remains pending. Once the court has ruled on that motion, you will be served with another notice or an order that will specify the date, time and place of the hearing on the attached motion and the deadline for filing and serving a written opposition to the motion.
4. You may contact the Clerk's Office or use the court's website (www.cacb.uscourts.gov) to obtain a copy of an approved court form for use in preparing your response (optional court form F 4001-1.RESPONSE), or you may prepare your response using the format required by LBR 9004-1 and the Court Manual.
5. If you fail to file a written response to the motion or fail to appear at the hearing, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.

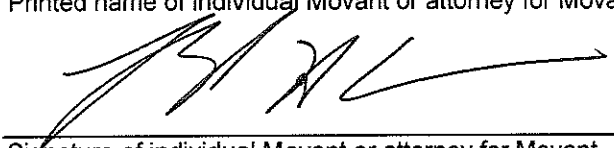
Date: 07/17/2018

LAW OFFICES OF RAYMOND H. AVER, APC

Printed name of law firm (if applicable)

Raymond H. Aver

Printed name of individual Movant or attorney for Movant


Signature of individual Movant or attorney for Movant

**MOTION FOR ORDER IMPOSING A STAY OR CONTINUING THE AUTOMATIC STAY
AS THE COURT DEEMS APPROPRIATE**

Movant: BENJAMIN SAEEDIAN

1. The Property or Debt at Issue:

- a. ☒ Movant moves for an order imposing a stay with respect to the following property (Property):
☐ Vehicle (*describe year, manufacturer, type, and model*):
Vehicle Identification Number:
Location of vehicle (*if known*):
- ☐ Equipment (*describe manufacturer, type, and characteristics*):
Serial number(s):
Location (*if known*):
- ☐ Other Personal Property (*describe type, identifying information, and location*):
- ☒ Real Property
Street Address: 252 South Clark Drive
Apt./Suite No.:
City, State, Zip Code: Beverly Hills, CA 90211 [APN 4333-009-021] ("Clark Drive Residence")
Legal description or document recording number (include county of recording):
See, Exhibit A to the Declaration Of Benjamin Saeedian ("Saeedian Declaration"), appended hereto.
☐ See attached continuation page

The following creditor(s) have a security interest or unexpired lease in this Property (give full name and address of creditor) U.S. Bank, N.A./Select Portfolio Servicing, P.O. Box 65250, Salt Lake City, Utah 84165.

to secure the sum of approximately \$ 1,668,708.20 now owed. (Secured Creditor/Lessor).
Additional creditors who are the subject of this motion, and their respective claims, addresses and collateral, are described on the continuation sheets attached. (*Attach additional sheets as necessary*)

- b. ☐ Movant moves for an order **imposing a stay** with respect to *any and all* actions against the Debtor and the estate taken concerning the debt/lease owed to the Secured Creditors/Lessors as described in this motion; and/or
- c. ☐ Movant moves for an order **imposing a stay as to all creditors.**
- d. ☐ Movant moves for an order **continuing the automatic stay** with respect to any and all actions against the Debtor and the estate taken concerning the debt/lease owed to the Secured Creditor/Lessor; and/or
- e. ☒ Movant moves for an order continuing the **automatic stay as to all creditors.**

2. Case History:

- a. ☒ A voluntary ☐ An involuntary petition concerning an individual[s] under chapter ☐ 7 ☒ 11 ☐ 12 ☐ 13 was filed concerning the present case on (*specify date*): 06/21/2018
- b. ☐ An Order of Conversion to chapter ☐ 7 ☐ 11 ☐ 12 ☐ 13 was entered on (*specify date*):
- c. ☐ Plan was confirmed on (*specify date*):

d. Other bankruptcy cases filed by or against this Debtor have been pending within the past year preceding the petition date in this case. These cases and the reasons for dismissal are:

1. Case name: In re Benjamin Saeedian
Case number: 2:17-bk-10946-NB Chapter: 13
Date filed: 01/26/2017 Date dismissed: 09/26/2017
Relief from stay re this Property ☐ was ☒ was not granted
Reason for dismissal: Case dismissed at the chapter 13 plan confirmation hearing
Debtor did not meet a debt limit for a chapter 13 case.

2. Case name:
Case number: Chapter:
Date filed: Date dismissed:
Relief from stay re this Property ☐ was ☐ was not granted
Reason for dismissal:

☒ See attached continuation page See, Exhibit B to the Saeedian Declaration, appended hereto.

e. ☐ As of the date of this motion the Debtor ☐ has ☒ has not filed a statement of intentions regarding this Property as required under 11 U.S.C. § 521(a)(2). If a statement of intentions has been filed, Debtor ☐ has ☐ has not performed as promised therein.

f. ☒ The first date set for the meeting of creditors under 11 U.S.C. § 341(a) is/was 7/30/2018 and the court ☐ has ☒ has not fixed a later date for performance by Debtor of the obligations described at 11 U.S.C. § 521(a)(2). The extended date (if applicable) is _____.

g. ☐ In a previous case(s), as of the date of dismissal there was:
☐ an action by the Secured Creditor/Lessor under 11 U.S.C. § 362(d) still pending or
☐ such action had been resolved by an order terminating, conditioning or limiting the stay as to such creditor.

3. The equity in the property is calculated as follows:

a) 1.	Property description/value: <u>Clark Drive Residence</u>	\$ <u>1,950,000.00</u>
2.	Creditor/Lien amount: <u>U.S. Bank/Select Portfolio Servicing</u>	\$ <u>1,668,101.04</u>
3.	Creditor/Lien amount: _____	\$ _____
4.	Creditor/Lien amount: _____	\$ _____
5.	Creditor/Lien amount: _____	\$ _____
6.	Total Liens	\$ <u>1,668,101.04</u>
7.	Debtor's Homestead Exemption	\$ <u>100,000.00</u>
8.	Equity in the Property (subtract lines 6 and 7 from line 1 and enter here)	\$ <u>181,898.96</u>
b) 1.	Property description/value: _____	\$ _____
2.	Creditor/Lien amount: _____	\$ _____
3.	Creditor/Lien amount: _____	\$ _____
4.	Creditor/Lien amount: _____	\$ _____
5.	Creditor/Lien amount: _____	\$ _____
6.	Total Liens	\$ _____
7.	Debtor's Homestead Exemption	\$ _____
8.	Equity in the Property (subtract lines 6 and 7 from line 1 and enter here)	\$ _____

☐ See attached continuation page

4. **Grounds for Continuing The Stay:**

a. ☒ Pursuant to 11 U.S.C. § 362(c)(3) the stay should be continued on the following grounds:

1. ☒ The present case was filed in good faith notwithstanding that a prior single or joint case filed by or against the individual Debtor which was pending within the year preceding the petition date was dismissed, because:
 - A. ☒ The prior dismissal was of a case not refiled under chapter 7 after dismissal under 11 U.S.C. § 707(b);
 - B. ☒ Good faith is shown because
only one previous case under chapter 13 was filed by Debtor and dismissed within the
preceding one year from the filing of the instant case. Debtor's previous chapter 13 case was not
dismissed due to Debtor's failure to file or amend the petition or other documents, or due to
Debtor's failure to perform under the terms of the confirmed plan, or due to Debtor's failure to provide
☐ See attached continuation page adequate protection as ordered by the Court.
[See also, Saeedian Declaration]
2. ☒ The Property is of consequential value or benefit to the estate because:
 - A. ☒ The fair market value of the Property is greater than all liens on the Property as shown above in paragraph 3 and as supported by declarations attached (*describe separately as to each property*);
 - B. ☒ The Property is necessary to a reorganization for the following reasons:
See, Saeedian Declaration

☐ See attached continuation page
 - C. ☒ The Secured Creditor/Lessor's interest can be adequately protected by (describe Movant's proposal for adequate protection):
The secured creditor is adequately protected by substantial equity cushion.

☐ See attached continuation page
3. ☒ The presumption of a bad faith filing under 11 U.S.C. § 362(c)(3)(C)(i) is overcome in this case as to *all* creditors because:
 - A. ☐ The prior dismissal was pursuant to the creation of a debt repayment plan. 11 U.S.C. § 362(i);
 - B. ☐ Debtor's failure to file or amend the petition or other documents as required by the court or Title 11 of the United States Code and resulting in dismissal was excusable because such failure was caused by the negligence of Debtor's attorney;
 - C. ☐ Debtor's failure to file or amend the petition or other documents as required by the court or Title 11 of the United States Code and resulting dismissal was excusable because:

☐ See attached continuation page

- D. ☐ Debtor's failure to provide adequate protection as ordered by the court in the prior case is excusable because:

☐ See attached continuation page

- E. ☐ Debtor's failure to perform the terms of a confirmed plan in the prior case is excusable because:

☐ See attached continuation page

- F. ☒ There has been a substantial change in the personal or financial affairs of the Debtor since the dismissal of the prior case(s) as follows:

Debtor's spouse's income has increased since the filing of the prior chapter 13 case, which, if combined with Debtor's income and the portion of sale proceeds from the sale of commercial real property owned by a company in which Debtor has ownership interest, is sufficient to fund a plan. From this, the court may conclude that this case, if a case under chapter 7, will result in a discharge or, if under chapter 11 or 13, in a confirmed plan that will be fully performed.

See, Saeedian Declaration, appended hereto.

☐ See attached continuation page

- G. ☐ For the following additional reasons:

☐ See attached continuation page

4. ☐ The presumption of a bad faith filing as to the Secured Creditor/Lessor under 11 U.S.C. § 362(c)(3)(C)(ii) is overcome in this case because

☐ See attached continuation page

5. **Grounds for Imposing a Stay:**

- a. ☐ Pursuant to 11 U.S.C. § 362(c)(4) this case was filed in good faith and grounds exist for imposing a stay as follows:

1. ☐ The Property is of consequential value or benefit to the estate because the fair market value of the Property is greater than all liens on the property as shown above in paragraph 3 and as supported by declarations attached.

2. ☐ The Property is of consequential value or benefit to the estate because the Property is necessary to a reorganization for the following reasons:

☐ See attached continuation page

3. ☐ The Secured Creditor/Lessor's interest can be adequately protected by (describe Movant's proposal for adequate protection):

☐ See attached continuation page

- b. ☐ The present case was filed in good faith notwithstanding that the prior single or joint cases filed by or against the individual Debtor pending within the year preceding the petition date were dismissed, because:

1. ☐ The prior dismissal was of a case not refiled under chapter 7 after dismissal under 11 U.S.C. § 707(b);

2. ☐ Good faith is shown because:

☐ See attached continuation page

- c. ☐ The presumption of a bad faith filing under 11 U.S.C. § 362(c)(4)(D)(i) is overcome in this case as to all creditors because:

1. ☐ Debtor had a substantial excuse in failing to file or amend the petition or other documents as required by the court or Title 11 of the United States Code, resulting in the prior dismissal(s) as follows:

☐ See attached continuation page

2. ☐ Debtor's failure to file or amend the petition or other documents as required by the court or Title 11 of the United States Code and resulting dismissal was as the result of the negligence of Debtor's attorney;

3. ☐ Debtor's failure to provide adequate protection as ordered by the court in the prior case is excusable because:

☐ See attached continuation page

4. ☐ Debtor's failure to perform the terms of a confirmed plan in the prior case is excusable because:

☐ See attached continuation page

5. ☐ There has been a substantial change in the personal or financial affairs of the Debtor since the dismissal of the prior case(s) as follows:

(from which the court may conclude that this case, if a case under chapter 7, may be concluded with a discharge or, if under chapter 11 or 13, with a confirmed plan that will be fully performed).

☐ See attached continuation page

6. ☐ For the following additional reasons:

☐ See attached continuation page

7. ☐ The presumption of bad faith as to the Secured Creditor/Lessor under 11 U.S.C. § 362(c)(4)(D)(ii) is overcome in this case because

☐ See attached continuation page(s)

6. **Evidence in Support of Motion: (Important Note: Declaration(s) in support of the Motion MUST be attached hereto.)**

- a. ☒ Movant submits the attached Declaration(s) on the court's approved forms (if applicable) to provide evidence in support of this Motion pursuant to LBRs.
b. ☒ Other Declaration(s) are also attached in support of this Motion.
c. ☐ Movant requests that the court consider as admissions the statements made by Debtor under penalty of perjury concerning Movant's claims and the Property set forth in Debtor's Schedules. Authenticated copies of the relevant portions of the Schedules are attached as Exhibit _____
d. ☐ Other evidence (*specify*):

7. ☐ An optional Memorandum of Points and Authorities is attached to this Motion.

WHEREFORE, Movant prays that this court issue an Order Imposing a Stay and granting the following (*specify forms of relief requested*):

1. ☒ That the Automatic Stay be continued in effect as to all creditors until further order of the court.

2. ☐ That the Automatic Stay be continued in effect as to the Secured Creditor/Lessor with respect to the Property until further order of the court.
3. ☐ That the Automatic Stay be continued in effect as to the Secured Creditor/Lessor with respect to actions to collect the debt owed to the Secured Creditor/Lessor until further order of the court.
4. ☐ That a Stay be imposed as to all creditors until further order of the court.
5. ☐ That a Stay be imposed as to the Secured Creditor/Lessor with respect to the Property until further order of the court.
6. ☐ That a Stay be imposed as to the Secured Creditor/Lessor with respect to actions to collect the debt owed to the Secured Creditor/Lessor until further order of the court.
7. ☐ For adequate protection of the Secured Creditor/Lessor by *(specify proposed adequate protection)*

8. ☐ For other relief requested, see attached continuation page.

Date: 7/17/2018

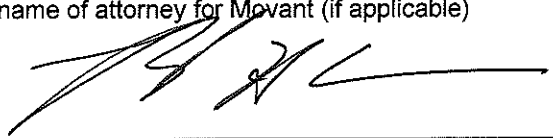
Respectfully submitted,

BENJAMIN SAEEDIAN

Movant name

LAW OFFICES OF RAYMOND H. AVER, APC

Firm name of attorney for Movant (if applicable)



Signature

Raymond H. Aver
Printed name of individual Movant or Attorney for Movant

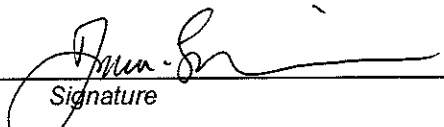
DECLARATION OF MOVANT

I, Benjamin Saeedian, am the Movant
~~of Movant.~~ I have read the foregoing motion consisting of 10 pages, and the attached materials incorporated therein by reference. If reference is made to balances owing, my testimony regarding same is based upon the business records of Movant kept in the ordinary course of business of Movant by persons whose responsibility it is to accurately and faithfully record information as to the Debtor's account on or near the date of events recorded. I am one of the custodians of such business records.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

7/17/2018
Date

Benjamin Saeedian
Printed name of declarant



Signature

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
10801 National Boulevard, Suite 100, Los Angeles, California 90064.

A true and correct copy of the foregoing document entitled: **NOTICE OF MOTION AND MOTION IN INDIVIDUAL CASE FOR ORDER IMPOSING A STAY OR CONTINUING THE AUTOMATIC STAY AS THE COURT DEEMS APPROPRIATE (with supporting declarations)** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 07/17/2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Raymond H. Aver ray@averlaw.com

Dare Law dare.law@usdoj.gov

Kelly M Raftery bknotice@mccarthyholthus.com, krafted@ecf.courtdrive.com

United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL:**

On (date) 07/17/2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 07/17/2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Honorable Neil W. Bason

Bin outside of Suite 1552

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

07/17/2018

Date

Ani Minasyan

Printed Name


Signature

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

SERVICE LIST

VIA U.S. MAIL

Franchise Tax Board
Bankruptcy Unit
P.O. Box 2952
Sacramento, CA 95812-2952

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

L.A. County Tax Collector
Bankruptcy Unit
P.O. Box 54110
Los Angeles, CA 90054-0110

Fariborz Beral
213 South Le Doux Road
Beverly Hills, CA 90211

Farzad Yeshova
2400 South San Pedro Street
Los Angeles, CA 90015

Grant & Weber
26610 West Agoura Road, Suite 209
Calabasas, CA 91302

Internal Revenue Service
Insolvency Group 1
300 North Los Angeles Street
M/S 5022
Los Angeles, CA 90012

Korosh Mousigi
1620 Los Angeles Avenue
Los Angeles, CA 90015

Securities & Exchange Commission
444 South Flower Street, Suite 900
Los Angeles, CA 90071-2934

Select Portfolio Servicing, Inc.
3217 South Decker Lake Drive
Salt Lake City, UT 84119

Select Portfolio Servicing, Inc.
P.O. Box 65250
Salt Lake City, UT 84165-0250

State of California
Franchise Tax Board: LA Field Office
300 South Spring Street, #5704
Los Angeles, California 90013.

1 Sharam Maryamian
2 316 South Clark Drive
3 Beverly Hills, CA 90211

4 Synergistic Financial, Inc.
5 c/o Jimie Kim, Esquire
6 14730 Beach Boulevard, Suite 106
7 La Mirada, CA 90638

8 Wells Fargo Card Services
9 Corporate Offices
10 420 Montgomery Street
11 San Francisco, CA 94104

12 Wells Fargo Card Services
13 CscI Dispute Team N8235-04m
14 Des Moines, IA 50306

15 Wells Fargo Bank, N.A.
16 Wells Fargo Card Services
17 P.O. Box 10438, MAC F8235-02F
18 Des Moines, IA 50306-0438

19 **VIA OVERNIGHT MAIL/EMAIL/FACSIMILE**

20 U.S. Bank, N.A.
21 c/o Kelly M. Raftery, Esquire
22 McCarthy & Holthus, LLP
23 1770 Fourth Avenue
24 San Diego, CA 92101
25 bknotice@mccarthyholthus.com
26 (619) 685-4811 facsimile

27 U.S. Bank, National Association
Corporate Offices
Attn.: Andrew Cecere, Chief Executive Officer
425 Walnut Street
Cincinnati, OH 45202

Select Portfolio Servicing, Inc.
Attn: Alan S. Wolf
Daniel K. Fujimoto, Esquire
The Wolf Firm
2955 Mail Street, 2nd Floor
Irvine, California 92614
wdk@wolffirm.com
(949) 608-0128 facsimile

Select Portfolio Servicing, Inc.
3217 South Decker Lake Drive
Salt Lake City, UT 84119
relationship.manager@spservicing.com
(801) 293-3936 facsimile

1 Select Portfolio Servicing, Inc.
2 c/o Corporation Service Company
3 dba CSC Lawyers Incorporating Service
4 Agent for Service of Process
5 251 Little Falls Drive
6 Wilmington, DE 19808
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